

ORIGINAL

1111 20th Street, N.W.
Suite 450
Washington, D.C. 20036
(202) 653-5175

In the Matter of)
)
1983 Cable Royalty)
Distribution Proceeding)

Docket No. CRT 84-1 83CD

ORDER

On May 29, 1985, the parties to the 1983 Cable Distribution Proceeding - Program Suppliers, the Joint Sports Claimants, Public Broadcasting Service (PBS), the National Association of Broadcasters (NAB), the Music Claimants, the Devotional Claimants, the Canadian Claimants, and National Public Radio (NPR) - filed their objections to the direct evidence submitted by the parties on May 13, 1985. On June 3, 1985, the parties filed their replies to the May 29 objections and on June 7, 1985, the Tribunal held a prehearing conference to hear oral arguments on the objections. The Tribunal makes the following evidentiary rulings based upon the pleadings, and the oral arguments.

OBJECTIONS AGAINST THE PROGRAM SUPPLIERS'
WRITTEN DIRECT CASE

1. NAB made several objections contingent upon receiving certain underlying documents. NAB stated that it has received the requested documents, and withdrew all contingent objections at the June 7, 1985 prehearing conference.

OBJECTIONS AGAINST THE JOINT SPORTS
CLAIMANTS' WRITTEN DIRECT CASE

1. NAB made several objections contingent upon receiving certain underlying documents. NAB has stated that it has received the requested documents, and withdrew all contingent objections at the June 7, 1985 prehearing conference.
2. PBS and the Devotional Claimants object to the testimony of David J. Stern on the ground that the Joint Sports Claimants refuse to provide the contract between the NBA and Turner Broadcasting Systems, Inc.

Objection Overruled - Document underlies David J. Stern's qualifications. PBS and the Devotional Claimants did not request the document to impeach Mr. Stern's qualifications, but for other purposes.

3. The Devotional Claimants object to the superstition promotional material proffered as Sports Exhibit 2 on the ground of hearsay.

Objection Overruled - For the purpose the Joint Sports Claimants intend to use the exhibit, it has some measure of reliability. Parties may argue as to the weight

the evidence should receive.

OBJECTIONS AGAINST PBS' WRITTEN DIRECT CASE

1. NAB objects to paragraphs 1 through 7, 26, and 39 of the exhibit entitled, "Direct Case of Public Television, on the ground that there is no sponsoring witness.

Objection Sustained - Counsel will have opportunity to
restate paragraphs in oral argument.

2. NAB objects to the Statement of John P. Madigan, Jr. (Exhibit 18) and his statement in "Direct Case of Public Television," (Paragraph 17, all but the first sentence) on the ground testimony is irrelevant.

Objection Overruled - PBS will be expected to relate testimony to market value. Parties may
argue as to weight.

3. The Devotional Claimants object to the Testimony of Steven R. Vedro (Exhibit 26), for failure to produce the individual response sheets which underlie the survey. —

The Tribunal orders the production of the individual response sheets by June 24. If PBS does not produce the underlying documents, the objection will be sustained.

4. The Program Suppliers and The Devotional Claimants object to

the Testimony of Steven R. Vedro on the ground that the testimony is irrelevant.

Objection Overruled - PBS will be expected to relate survey to calendar year 1983. The degree to which testimony regarding the value of local cable originated channels providing educational programs relates to market value of distant signal educational programs also must be established by PBS and is a matter of weight.

5. The Program Suppliers and Joint Sports object to the McHugh and Hoffman study for failure to provide underlying documents.

The Tribunal orders the filing of the underlying documents with the Tribunal by June 24. Those parties who want any type of analysis of the documents conducted for the purpose of discrediting the reliability of the survey will make such request by June 24. The Tribunal staff will conduct the analysis and announce the results in time for proper cross-examination. No inspection of the documents will be permitted by other than the Tribunal staff. The documents will not become part of the record.

6. The Joint Sports Claimants object to the McHugh and Hoffman

survey for failure to make a threshold showing of reliability.

Objection Overruled.

7. The Program Suppliers and NAB object to the McHugh and Hoffman survey on the ground that it is irrelevant.

Objection Overruled - PBS will be expected to relate survey to calendar year 1983. The degree to which it relates to 1983 is a matter of weight.

8. The Program Suppliers and NAB object to the Barthman study (Exhibit 33), and related testimony, on the ground that it is irrelevant.

Objection Overruled - PBS will be expected to relate study to calendar year 1983. The degree to which it relates to 1983 is a matter of weight. Form 1 system information is not irrelevant.

OBJECTIONS AGAINST NAB'S WRITTEN CASE

1. The Program Suppliers and the Joint Sports Claimants object to testimony of Dr. John D. Abel on ground witness is not qualified to testify on legal matters.

Objection Overruled - Tribunal accepts NAB's limitation of Dr. Abel's testimony to the state of mind of NAB.

2. The Program Suppliers and the Joint Sports Claimants object to the parts of Dr. Abel's testimony which refer to NCTA survey on ground that Dr. Abel is not qualified to testify as to that survey, and NAB has refused to provide underlying documents.

Objection Overruled as to witness' competency. Although parties filed an untimely request for underlying documents, the Tribunal considers their production important. The Tribunal orders the production of the underlying documents by June 24. If NAB does not produce the underlying documents, the objection will be sustained.

3. The Joint Sports Claimants object to Dr. Abel's testimony regarding the ELRA 1984/1985 Cable Mark Probe Survey on the ground that NAB has refused to provide underlying documents.

Objection Overruled - NAB's proffer of certain underlying documents was sufficient. The Joint Sports Claimants may require NAB to provide that documentation which NAB proffered.

4. NPR filed conditional objections to Dr. Abel's testimony regarding distant noncommercial versus distant commercial radio signals on the grounds of lack of competency and irrelevancy.

Objection Overruled

5. The Program Suppliers object to the Testimony of Arthur R. Miller on the ground that Mr. Miller lacks first-hand knowledge of the licensing agreements between syndicators and broadcast stations.

Objection Overruled

6. The Program Suppliers object to the Testimony of Harold E. Protter on the grounds of irrelevancy, failure to provide underlying documents, hearsay, and unsubstantiated statements.

Objections on the grounds of irrelevancy and failure to provide underlying documents overruled.

The rulings on the objections on the grounds of hearsay and unsubstantiated statements are as follows:

- | | |
|---|------------|
| (1) page 9, sentence beginning "The reason the syndicators insist on this I suppose..." | Sustained. |
| (2) page 10, paragraph beginning, "One of the reasons why..." | Overruled. |
| (3) page 12, paragraph 4 | Sustained. |
| (4) page 12, last two full sentences, beginning "But it is...." | Overruled |

(5) page 14, second full paragraph

Sustained as
to first two
sentences of
the paragraph.
Overruled as to
the rest of
the paragraph.

(6) page 16, last sentence, "Two years ago
(in 1983), Ted Turner told me...."

Sustained

(7) page 17, first and second full paragraphs Sustained

OBJECTIONS TO THE MUSIC CLAIMANTS' WRITTEN DIRECT CASE

1. NAB and the Devotional Claimants object to exhibits 20 to 24 on the grounds of hearsay, and failure to provide underlying documents.

Objection Overruled - Charts have some measure of reliability.
Parties may argue as to weight.

2. NAB objects to the newspaper articles as hearsay, and irrelevant.

Objection Overruled - The articles have some measure of reliability. Parties may argue as to weight. The Music Claimants are expected to relate cable-originated programming testimony to distant signal carriage. Similarly, the Music Claimants are expected to relate data from 1984 and 1985 to 1983. Parties may argue as to weight.

3. NAB objects to testimony on music videos on pay cable services as irrelevant.

Objection Overruled

OBJECTIONS TO THE DEVOTIONAL CLAIMANTS' WRITTEN CASE

1. The Program Suppliers object to the Testimony of David W. Clark on that portion which relates to "time plus fee generated approach."

The Tribunal reserves ruling on this objection until after it has considered the later-filed pleadings.

2. The Program Suppliers object to the Testimony of David W. Clark on that portion which refers to the sale of a devotional program to BBC as irrelevant.

Objection Overruled.

3. The Program Suppliers object to the U.S. News and World Report Article as irrelevant.

Objection Overruled.

4. All other objections by the Program Suppliers were untimely filed; therefore they are overruled.

OBJECTIONS TO THE CANADIAN CLAIMANTS' WRITTEN DIRECT CASE

1. NAB made several objections contingent upon receiving certain underlying documents. NAB stated that it has received the requested documents, and withdrew all contingent objections at the prehearing conference.

OBJECTIONS TO NATIONAL PUBLIC RADIO'S WRITTEN DIRECT CASE

1. Nab objects to Testimony of Douglas J. Bennet, pp. 8-10, and Exhibit PR-205 on the ground that the testimony is irrelevant.

Objection Overruled - NPR will be expected to relate testimony to cable carriage of distant signals.

Parties may argue as to weight.

2. The Music Claimants object to Testimony of Dean Boal, p. 12, on the ground that the testimony is unsupported.

Objection Overruled - Testimony is within personal knowledge of witness. Parties may argue as to weight.

3. The Music Claimants object to the Testimony of Deal Boal, pages 1 and 2, for failure to provide underlying documents.

The Tribunal orders the production of underlying documents by June 24. If NPR does not produce the documents, the objection will be sustained.

4. The Devotional Claimants object to Exhibits 201A-201H on the ground that the witness is not qualified to sponsor the program guides.

Objection Overruled.

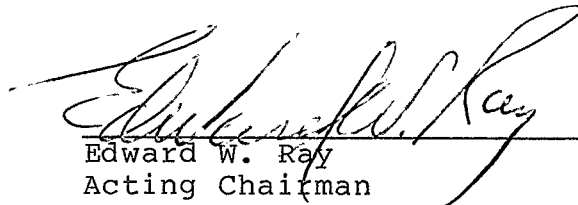
84-1 Order
6/14/85
Page 11

5. The Devotional Claimants object to Exhibit 203 on the ground that the editorial is hearsay.

Objection Overruled - The Tribunal accepts NPR's limitation of the testimony to the state of mind of the editorial writer.

6. NAB objects to Exhibit PR-206 as irrelevant.

Objection Sustained.


Edward W. Ray
Acting Chairman

June 14, 1985